

38th Annual
Corporate Counsel Institute

Contract Fundamentals: Tips to Avoid Drafting Pitfalls

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The best laid plans of mice and men, often go awry...





Topics

1. Definitions	6. Everything But the Kitchen Sink
2. Irrelevant Interpretations	7. Arbitration Clauses
3. Time-period Inaccuracies	8. Boilerplate
4. Limitation of Liability	9. Termination
5. Reps & Warranties	10. Audit Provisions

Sloppy Definitions

- **One-Shot Definition**: Special definitions should be reserved only for terms used more than once.
 - It is harder to Read* a clause if you have to refer to the definitions Half* way through.

**In the preceding bullet point, "Read" shall mean to read in the customary use of the word and accordingly shall, to avoid any doubt, include, but not be limited to: skimming, speed-reading, listening to audiobooks, etc.; and "Half" is defined generally to mean between 45% and 55%.*

Sloppy Definitions (cont'd)

- **Circular Definitions:** Using the defined term to define itself, OR using Term A to define Term B and then using Term B to define Term A.

“Material” shall be defined as any material provided by one party to another.

“Product” means Instruments and Software.
“Software” means the non-instrument portion of the Product.

Poor Definitions (cont'd)

- **Improper Expansion of Definition:**
 - Including prohibitions or restrictions as part of the defined term rather than a covenant, obligation, or otherwise.

Confidential Information shall be defined as information..... *Each party (a) shall not publish or otherwise disclose the other party's Confidential Information (except to its Affiliates, employees, agents or consultants having a need to know and only to the extent needed), and (b) shall not use such Confidential Information except as expressly permitted under the terms of this Agreement or as otherwise authorized in writing by the other.*

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"Clarified Contracts and Frequently Misunderstood Terms"